



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

SEPTEMBER 14, 2004

PRESENT: Acevedo, Benich, Escobar, Lyle, Mueller, Weston

ABSENT: Engles

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Engineer (SE) Creer, and Minutes Clerk Johnson

Chair Weston called the meeting to order at 7:00 p.m.

#### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Weston opened the public hearing.

With no one present from the audience wishing to address matters not appearing on the agenda, the public comment period was closed.

#### **MINUTES**

**AUGUST 31, 2004 COMMISSIONERS MUELLER/ACEVEDO MOTIONED TO APPROVE THE AUGUST 31, 2004 MINUTES, WITH THE FOLLOWING MODIFICATION:**  
**Page 4, last line on page: ....the community with the ~~Health Foundation~~ Daughters of Charity.**

**THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES; ACEVEDO, BENICH, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: ESCOBAR; ABSENT: ENGLS.**

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PM Rowe announced that the applicant for item 4 (UP-04-09: Joleen-Metro PCS) requested the item be continued due to required attendance at another meeting in another City, precluding attendance this evening. PM Rowe told Commissioners that the public hearing should be opened as advertised, thereby granting any member of the public an opportunity to speak to the matter.

### OLD BUSINESS:

*Commissioner Mueller was excused at 7:02 p.m., due to a conflict of interest as he is the Chairman of the Citizens Advisory Board for the De Paul Heath Center, which is a committee of the Board of Directors of O'Conner Hospital. O'Conner Hospital owns part of the PUD.*

#### 1) **ZA-04-02: COCHRANE- ASSISTED LIVING CENTER**

A request to approve development standards and design guidelines for the De Paul hospital site located on the south side of Cochrane Rd. between Mission View and St. Louise Dr.

PM Rowe presented the staff report, telling Commissioners the report contains further amendments to the Planned Unit Development (PUD) as he called attention to the design standards (Exhibit A) and the Architectural guidelines (Exhibit B). PM Rowe explained the information contained in the report represents more precise addressing of styles, the actual mass of the buildings and the requirements of the PUD chapter of the City Ordinance. PM Rowe further explained this project is 'on a *fast track*' with the City and so is being heard. PM Rowe went on to tell Commissioners that the issue has already been to the Architectural Review Board (ARB) for input from that body.

Commissioner Lyle requested clarification regarding the architectural guidelines and if that document was included in the staff report? PM Rowe called attention to the second part of Exhibit A, wherein the guidelines are contained.

Commissioner Lyle further clarified that the Development Standards, with the set-backs were located in Exhibit A at the back of the document.

Commissioner Lyle continued by stating that the location of the landscape design guidelines (in the document) is not clear. He also called attention to the ambiguity of dates (07-10-01 and 07-10-04) which the document references. PM Rowe clarified the revision date of 07-01-04 is the correct date.

Commissioner Lyle asked about the request of change to the maximum building height, inquiring if this included the roof element as well? (The applicant was presented and responded in the affirmative from the audience.)

Commissioner Benich called attention to Exhibit B, section 4.4 asking what 'Cottage Craftsman' is? PM Rowe explained it is an Architectural style which is encouraged, but not mandated that will achieve compatibility with existing buildings.

Commissioner Acevedo observed that this issue went to the Architectural Review Board in August. "Are these changes – being presented tonight - consistent with what the ARB wanted?" he asked. PM Rowe indicated that was the case.

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Commissioner Lyle asked about the lot layouts, inquiring if there were still two alternatives to be considered? PM Rowe said that both of the lot layouts as adopted were 'OK'. Commissioner Lyle then called attention to a concern with the driveway location, particularly the one nearest Cochrane and the freeway, saying "It looks very close." PM Rowe informed there are still several approval processes to be achieved with the traffic patterns to be reconsidered again along that final driveway location.

Chair Weston opened the public hearing.

The applicant, Ricardo de la Cruz, 745 Oakhill Rd; Aptos, was present to answer questions. Mr. de la Cruz commenced by addressing the landscape standards, saying the original presentation to the Commissioners in June had been a 'concept' and as with the PUD design standards, (along with the entire design package) was offered for a general site plan. Mr. de la Cruz explained that the specific landscape design plan is one which has the specifications of the plants, and such items as drainage design. Mr. de la Cruz further explained that a planner should be able to 'pull out design standards' and so have direct reference to the package.

Commissioner Lyle, referencing a document in the Commissioner's packet, said he was unable to find the landscape design Mr. de la Cruz spoke of, and asked if there were any changes? Mr. de la Cruz explained the (landscaping) plan had been further refined after the Commissioner's meeting by the ARB as the ARB members got into great detail with such items as the plant list and locations for the plantings. "However," he emphasized, "they are the same as originally presented."

Commissioner Lyle continued by asking if there were changes in the detail but wondering if the ARB had accepted the landscape design to a point that it needs to be reviewed by the Commissioners? Mr. de la Cruz insisted that the plan had not changed in detail, but merely refined by the ARB members. PM Rowe agreed the plan had not changed to a degree so that further or new action would be needed. PM Rowe reminded that usually these types of items are referred to the Architectural Review Board as they have extensive expertise in these matters.

Commissioner Benich then turned attention to Exhibit B, citing the permitted uses and asking for clarification of these items, particularly item E: Congregate Care Facilities. Mr. de la Cruz explained that the specific uses for Congregate Care Facilities, noting same term is used in different states, but Congregate Care Facilities has a different connotation in California, being specific to seniors care. "If you think of a project or facility which is comprehensive with assisted living up to Skilled Nursing Facilities, then congregate care provides less service but basic meal and housekeeping programs." Mr. de la Cruz said, "These folks are more healthy, more mobile, more agile." Commissioner Benich commented what appears to be offered is from minimal care to Skilled Nursing Facilities.

Mr. de la Cruz then explained that 'cottage craftsman' is a new term wherein there is attempt to distinguish between types of Architecture. The style is 'geared' to add new features which provide for a 'more home type styling, not institutionalized'.

With no others indicating a wish to speak to the matter, the public hearing was closed.

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Discussion ensued regarding the landscaping plan. PM Rowe informed that the original plan had listed a selection of trees, groundcovers, and contained a general indication of where the trees would be located. This plan was refined, PM Rowe said, by the ARB as they discussed with the applicant where certain types of treatment could be located. However, he said, the types of plants had not changed. Chair Weston commented that he realized the Commissioners and the ARB had both seen the plan, but he thought the Commissioners would get into more detail regarding the matter.

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 04-89, RECOMMENDING APPROVAL OF DEVELOPMENT STANDARDS AND ARCHITECTURAL GUIDELINES FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER, NOTING THE MAXIMUM ALLOWABLE ROOF HEIGHT WAS INCREASED TO INCLUDE THE ROOF ELEMENT, BUT NOT TO EXCEED 35-FEET; TOGETHER WITH THE INCLUSION OF THE ARB GUIDELINES REVISED AUGUST 26, 2004 AND CONTAINING THE FINDINGS AND CONDITIONS SO NOTED. COMMISSIONER BENICH SECONDED THE MOTION.**

Commissioner Acevedo asked, for purposes of ascertaining clarity, "Do any of the drawings which have gone thru the ARB hearings meet the new roof element allowances?" Mr. de la Cruz explained that the 30-feet is basically the roof ridge line, but there is approximately a five-foot increase with the roof elements.

Chair Weston remarked the set of guidelines can be adopted.

Commissioner Acevedo insisted the Commissioners really need 'to make clear regarding the maximum roof height with the towers'. Commissioner Lyle agreed. PM Rowe make clear that what is representative (the drawings) indicate the maximum ridge height (29feet 0 inches) but the tower elements are shown. Discussion followed regarding the language of Exhibit B, the note just above section 4.2 which has now been amended to include the tower elements.

Commissioner Lyle repeated, so the 30-foot is inclusive of the ridge but excluding the towers. Mr. de la Cruz tells of the steps in gaining approval for new buildings and telling Commissioners he will go to the ARB for those approvals.

Following further discussion, Commissioners did agree that the height could be 30-feet to the ridge line and five-feet for the tower.

**THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES; ACEVEDO, BENICH, ESCOBAR, LYLE, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES, MUELLER.**

*Commissioner Mueller returned to the meeting at 7:31 p.m.*

### NEW BUSINESS:

**2) ZAA-03-13:** Amending Ordinance 1641 New Series, extending the term for allowing for modified  
**CITY OF** setback dwellings in residential projects due to construction liability insurance issues  
**MORGAN HILL-** surrounding ownership attached housing.

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### ATTACHED HOUSING ZONING TEXT AMENDMENT

PM Rowe gave the staff report, telling Commissioners that this item is on the agenda due to 1) the fact that Ordinance 1641 requires review and hearings at the end of 12 months of enactment to ascertain the need for extending the Ordinance (if an insurance crisis still exists) and 2) a request by Rocke Garcia's attorney to extend beyond the anticipated end date and 3) to process now probable changes now rather than in November, 2004. PM Rowe said it was the consensus of the City Council that an extension should be allowed. Should item 3 of the request be granted, it is understood that an applicant would be responsible for paying the cost to do so.

PM Rowe pointed out that this agenda item is to extend Ordinance 1641, and with that extension, the language in the ordinance should be more generic and not tied specifically to either Measure P or C. Instead, should be referred to as the Residential Development Control System (RDCS).

PM Rowe explained that Scott Schilling has made a separate request to amend the Ordinance within the discussion this evening: *to allow a side yard fence to be constructed at the centerline of the six foot separation of the modified set back units*. PM Rowe said that, in general, the Planning Department opposes this idea, as it is not considered enough room to provide 'usable space'.

It was pointed out that all references to Measures P and C have been eliminated in the revisions presented in the materials for the commissioners this evening. PM Rowe explained that when the Ordinance was adopted certain 'Measures' were in effect; consequently, there was no change to language in the document at those locations. He then directed attention to those sections, which were changed, explained that some are in municipal code, others are not.

Chair Weston opened the public hearing.

Rocke Garcia, no address listed, told Commissioners that as updated Uniform Building Codes are adopted by the City, all new revisions are included by reference in the Ordinance.

Mr. Garcia exhibited plans he had submitted to the City in January. Explaining that the plans for Phases 1 and 2 contain lots that are 'z-lots', Mr. Garcia showed plans which are dependent on action being completed on the request at this time. He continued the detail of the two designs under Ordinance 1641 and showed a third plan with porticoes which share and link a design. Mr. Garcia said he supports the request of Mr. Schilling regarding the 3-foot side yard, and saying such a plan would be beneficial. He then detailed the location of potential 3-foot side yards and explained how windows could be placed on the dwellings to allow light but still afford privacy.

Responding to questions from the Commissioners, Mr. Garcia explained where lot lines are located and stated that 'the number one objective of the request is to get a variation of plans'. Mr. Garcia spoke at length advocating extension of the Ordinance for 2 years. He told of how the builders are working to achieve 'stagger to the additional requirements of the previous Ordinance'.

Chair Weston commented that it is hard to get a handle on specifics without knowing details of what Mr. Garcia is intending to do.

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Mr. Garcia said it is simple: the builders want to take a 6-foot side yard and split it in half. He outlined the benefits of doing so.

Chair Weston said he was under impression that the insurance crisis had driven the original request, and asked if that crisis still existed?

Mr. Garcia declared, "Indeed the insurance crisis is still there!" as he told of a legislative bill in the Assembly which is designed to help alleviate the issues the builders are facing, 'but it will be a long time coming. We are not trying to just separate buildings but give best product for community."

Commissioner Acevedo asked if Mr. Garcia supported the staff recommendation? Mr. Garcia responded, that yes, he did, adding that he support broadening the Ordinance to encompass Mr. Schilling's request as well.

Chair Weston commented that the builders appear to be prepared to be creative but still meet the requirements of Ordinance 1641.

Scott Schilling, 16060 Caputo Dr. #160, spoke to the Commissioners indicating that the Central Park project has been on-going since 1994 and contains 165 units. Mr. Schilling related that about one and a half to two years ago, when the insurance crisis intensified was about the time that he had installed streets for the project, as well as driveways for the duet units. When designing the units for placement on the lots, Mr. Schilling said, the crisis occurred and the City allowed him to design those as detached units Mr. Schilling told of the movement of the dwelling locations so he could use exiting utilities. "We've spent much time trying to meet the requirements of the Ordinance, but need more we need more flexibility," Mr. Schilling told the Commissioners. He went on to explain the design features of the side yards, and saying he would prefer to have flexibility to place a fence down the middle for a three-foot side yard. Telling how usable the three-foot space would be and how the window placement could be used for best design features for privacy and attractiveness. Mr. Schilling continued that some of the work with the ARB has resulted in window placement and size that have been minimized. He continued, explaining a provision of Uniform Building Code for window/door placement on exterior walls, which face in small, limited space. Mr. Schilling told Commissioners he is asking for flexibility of Ordinance 1641, and will utilize the space by varying the distance of the three-foot for about 15-20 feet between the dwellings then 'wiggle' the line for having a 'typical' five-foot side yard. "We're trying hard to recommend simple resolutions," Mr. Schilling declared.

Commissioner Escobar asked if all the Below Market Rate (BMR) units in this phase are matching and will those to be constructed match the existing? Mr. Schilling said he has 12 units to do, and those will be slightly similar but not all are BMRs?

Mr. Schilling also informed that this is not changing any distances between buildings as required under Ordinance 1641. He continued by saying that Ordinance 1641 was designed for 0-lot lines.

Commissioner Benich inquired what is the size of back yards? Mr. Schilling responded that they are 20 feet in an R-2 zone. Mr. Schilling explained, "These units have 20-ft back yards; a couple may be 18 feet, and the Code requires 15 feet."

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Commissioner Acevedo called attention that on Exhibit 1 – which Mr. Schilling presented, asking if the fence would go all the way to the street? Mr. Schilling responded, “No, there would be no fence line to interfere with the architectural element.” He went on to explain that the fence at side the yard would not be seen from the street.

Commissioner Lyle asked if in designing a new project, how the developers would feel about this proposed change? Mr. Schilling answered that he would like to see the entire R-2 code changed, and explained how it would be beneficial. He readily conceded, however, if he had it to do again, he would have either a Z-lot or a zero lot line. “This is not the most desirable,” Mr. Schilling told Commissioners.

Dick Oliver, 275 Saratoga Ave., #105; Santa Clara, said he represents several projects and believes the City Council is supportive of allowing developers to apply under Measure C for the modified setbacks, adding he ‘supports the statements made by Mr. Garcia and Mr. Schilling’. Mr. Oliver requested that in Sections 2, 3, 4 of Exhibit A the reference to either Measure C or Measure P. It was pointed out that the document as currently presented references ‘RCDS’.

Chair Weston asked, “Since there are no Measure C projects that are currently applicable, but you are in favor of the extension, would you be comfortable with one-year extension?” Mr. Oliver responded, “I think we have to do two-year extension and that would do the job. He continued that with the insurance crisis, and a two-year window would give time to look at the projects and the timeliness in which they are completed. completed

Chair Weston and Mr. Oliver continued the discussion, clarifying that a two-year extension would cover all projects commenced by June 30, 2007. Mr. Oliver explained that before a project can be started, the developer must have insurance. He went on to explain that when the builders have submitted for Measure C, the attached housing (alternate plan) would be affected if Ordinance 1641 sunsets.

With no others present to speak to the matter, the public hearing was closed.

Chair Weston commented there appears to be two issues to discuss: 1) did the Commissioners want to extend the Ordinance; and 2) if so, should it be a one-or-two extension? **BY CONSENSUS, THE COMMISSIONERS DECLARED THAT A TWO-YEAR EXTENSION WAS THE CHOICE.**

Commissioner Lyle brought up a side issue: Section 3 (of the new document) changes section 15 of Ordinance 1641 which provides for a one-year extension. Commissioner Lyle asked that the section be deleted as “Having this section doesn’t do anything; it should be deleted.” Commissioner Mueller urged not making the change before the current competition, whereby the applications are due to the City by October 1, 2004.

Commissioner Lyle insisted that in the prior document, Section 15 is not being followed. Discussion ensued regarding the current competition, which will be for FYs 06-07 and 07-08, and what will be covered under Ordinance 1641 as it is currently written.

Chair Weston expressed concern that perhaps the Ordinance should be extended for only

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one-year, noting, "The City can deal with the insurance issue later."

Chair Weston pointed out that in Section 11 modifications are permitted to allow variance of floor plans, with more creativity.

Commissioner Escobar brought the Commissioners back to the three-foot side yard issue. PM Rowe explained that what Mr. Schilling would like is to be able to do is put the fence on the lot line of the side yard.

Commissioners thoroughly discussed the matter with the following points being raised:

- difference between the zero-lot line and this proposal: easement is needed to get to owner's own property (PM Rowe said a secondary easement is available and explained how fences are offline)

- potential benefit for three-foot side yards

- other projects with Z-lots (PM Rowe explained that the ARB has allowed some variation for higher windows, etc.)

- normal duets are attached to each other so should not be variance under this Ordinance

- potential for 'better living conditions'

- whether by modifying the use if the units remain duets

Commissioner Mueller expressed the belief that the City will be living with the condition longer than originally thought, but would now be building units for lower income.

Chair Weston wondered when the insurance crisis could stop making these type items an issue.

Commissioner Lyle commented that maybe there should be an R-2 code change, but the action tonight should not imply the City would continue the extensions.

Commissioner Benich and Commissioner Acevedo agreed they could see granting the three-foot side yard request, but insisting it 'should not be given generically'.

Commissioner Lyle said that efforts should be made to ensure the windows are kept high on the sides of the facing walls. PM Rowe replied that window placement is typically addressed at ARB.

Commissioner Mueller said he wasn't clear on an issue: Mr. Schilling clearly has a problem in the Central Park project, but will not do any more projects mirroring that one. "I'm not clear that the other two developers have issues," Commissioner Mueller revealed. PM Rowe responded that the ability to have fence down middle of the side yard is preferred by the home buyer. Commissioner Mueller continued that he thinks any request should deal with specific changes.

Commissioner Escobar urged that, "Since we've modified these already (due to the insurance crisis), buyers have one thing in mind: when they buy property, if there is a common wall, that's one thing. If the walls are separated, intrusion issues pop up. Owners want their 'own space' no matter how small – it's important to the residents, particularly with a first home." Commissioner Escobar expressed support for idea and approval of the request.



Commissioner Acevedo said he would like to have the fence not exceed a certain length of building, and suggested a percentage of the length (of the dwelling) be considered.

Commissioner Mueller asked about returning the matter to be discussed again with recommended changes? PM Rowe explained the time element within Measure C applications time-frame. He said it could be brought back for discussion at the September 28<sup>th</sup> meeting. Commissioner Mueller urged the changes be considered at the future meeting.

**COMMISSIONER MUELLER MOTIONED TO CONTINUE THE DISCUSSION FOR SUBSEQUENT DECISION-MAKING PENDING ‘REVISION CLEAN-UP’ TO THE SEPTEMBER 28, 2004 PLANNING COMMISSION MEETING.**

Commissioner Lyle asked for further discussion on Section 3 and the related Section 15 of Ordinance 1641. Commissioner Escobar indicated he did not think the matter important at this time. Commissioner Lyle said, if the Ordinance goes on another two years, permanent resolution of this matter is needed.

**COMMISSIONER ESCOBAR SECONDED THE MOTION.**

Commissioner Acevedo asked for further discussion on his suggestion of not having more than 50% of the building length for fencing. Commissioner Escobar asked PM Rowe if, in addition to not more than 50% of building length for fencing, other alternatives to the three-foot width should be considered, e.g., distance of common architectural features? Commissioner Acevedo agreed that there is need for architectural variation, not ‘just straight-line’.

**THE MOTION PASSED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; ENGLES WAS ABSENT.**

Commissioner Mueller asked about having the Ordinance ‘made permanent instead of on-going extensions’. PM Rowe responded, “If that is the intent of the Commissioners, we need to come up with a comprehensive plan for change, which will be long term, not use Ordinance No. 1641 to implement new City policy.”

Commissioner Mueller said, “It may be necessary to look at an end of this policy.” PM Rowe reminded that three or four years ago he tried to plan a ‘field trip’ for City decision makers to see examples of small-lot, single-family subdivisions in other Cities and expressing the hope that this could still be done. Commissioner Mueller agreed, saying, “We need to do something positive. The ‘band aid approach’ is not good.” Commissioner Lyle commented that the City must look at the matter very closely within the next 18 months.

A request to amend a conditional use permit to allow the installation of six panel antennas on an existing monopole and to install five equipment cabinets. The site is located at 16170 Vineyard Boulevard in the Light Industrial (ML) zoning district.

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## VINEYARD- AT&T WIRELESS

Commission meeting, the owner of an adjacent business expressed concern about the potential fire hazards associated with the existing Nextel equipment shelter at the site. It has since been reported to Planning Department staff that Nextel is continuing to do routine maintenance and cleaning at the site with regularly scheduled ; 'pressure washing' of the coils of the HVAC unit, and such action does not create any potential fire hazard to the site.

Commissioner Acevedo said that if Nextel is still hosing off the unit, there may not be a safety concern, but perhaps the Commission should still be looking for additional information of the procedure, especially if it is still annoying to the neighbors.

Commissioner Mueller recalled the neighbor talking about an alarm. He said the alarm shouldn't have to go off to do maintenance. Commissioner Mueller suggested asking for the maintenance record log, which should tell what the issue is. "Perhaps the unit should be ~~more~~ property maintained," he said. *"Maybe this unit is not getting the proper maintenance."*

Discussion followed, regarding the why alarm should be monitored further.

Chair Weston opened the public hearing.

Dayna Aguirre, 4160-B Hacienda Dr.; Pleasanton, was present representing the applicant, Velocitel, and said there is no problem with the alarm, but noted it may be just the situation. When Commissioners began to question the speaker regarding the maintenance, Commissioner Escobar suggested the questions might be directed to the 'wrong person'.

Commissioner Mueller asked if in the process of the equipment being put in, whether a switch in technology to full digital apparatus? Ms. Aguirre responded, "Yes, the company is going to full digital and doing away with analog service." Responding to Commissioner Mueller's further inquiries, Ms. Aguirre said that at the new site the company would file for modification for disposing of the old equipment. She added that a technician would complete the removal and installation.

With no other persons present to address the matter, the public hearing was closed.

Commissioner Benich proposed a revision to item 7 of Resolution No. 04-86, since this pole is reaching maximum capacity:

7. Following the commencement of operations, field tests ~~will~~ *shall* be conducted  
to ensure ~~safety requirements are being met.~~ *radio frequency electromagnetic field environments do not exceed Federal guidelines. The results of the test shall be submitted to the Morgan Hill Planning Department for filing and future reference.*

Other Commissioners concurred with this suggestion.

**COMMISSIONER MUELLER OFFERED RESOLUTION NO. 04-86  
APPROVING AN AMENDMENT TO A CONDITIONAL USE PERMIT TO**

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**INSTALL SIX ANTENNAS ON AN EXISTING MONOPOLE AND FIVE EQUIPMENT CABINETS LOCATED AT 16170 VINEYARD BLVD. IN THE LIGHT INDUSTRIAL ZONING DISTRICT TOGETHER WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN, AND WITH MODIFICATION TO ITEM 7 AS AGREED. COMMISSIONER LYLE SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES; ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLS.**

Commissioner Mueller indicated he has been thinking about the old obsolete equipment as being really big old cabinets, which are not in use any longer. He said he thinks the applicants for these installations just generally clean up on leaving, but he wanted to know *how* the clean up is done? "What if the site is abandoned?" Commissioner Mueller pondered. PM Rowe explained the exit requirements.

**COMMISSIONER MUELLER MOTIONED THE ADDITION OF ITEM 8 TO RESOLUTION THAT STATES:**

**8. ANY USER OF THE SITE MUST REMOVE THE EQUIPMENT (OR BE FINANCIALLY RESPONSIBLE) IF THE SITE IS ABANDONED OR THE EQUIPMENT IS SWITCHED OUT.**

**COMMISSIONER BENICH SECONDED THE MOTION, WHICH CARRIED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT, AND ENGLS WAS ABSENT.**

**4) UP-04-09:  
JOLEEN-METRO  
PCS**

A request for approval of a conditional use permit to allow the installation of a 50-ft tall, 19-in. diameter telecommunications pole and accessory equipment structure on the Morgan Hill Plastics site. Morgan Hill Plastics is located at the southwest corner of E. Dunne Avenue and Joleen Way, at 16885 Joleen Way.

PM Rowe reminded that it had been announced earlier that the applicant for this item requested the item be continued due to required attendance at another meeting in another City, precluding attendance this evening.

Chair Weston opened the public hearing.

**THE MOTION FOR CONTINUATION WAS MADE BY COMMISSIONER MUELLER, WITH THE SECOND BY COMMISSIONER ESCOBAR. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES; ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLS.**

**5) DA-04-03:  
DEWITT-  
LATALA**

A request to approve a development agreement for a four-unit project located on 1.45 acre site located on west side of DeWitt Avenue approximately 500 feet south of Oak Park Drive. The zoning for the site is R1-12,000 RPD.

PM Rowe gave the report explaining the differences in the road as now presented which is the result of City Council action modifying the street alignment following the Commissioners actions on the matter. PM Rowe continued by explaining how the direction of the Council members (to change the traffic pattern) will be accomplished as he presented the revised exhibit and modifications to Resolution No. 04-87 as part of the

staff report.

Chair Weston opened the public hearing.

Ascertaining there were no members of the public to address the matter, Chair Weston closed the public hearing.

**COMMISSIONER MUELLER OFFERED RESOLUTION NO. 04-87 RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT DA-04-03: DeWITT-LATALA FOR APPLICATION MMP-03-06: DeWITT-LATALA, WHICH CONTAINS THE FINDINGS AND CONDITIONS ALONG WITH THE MODIFICATIONS PRESENTED IN THE STAFF REPORT. COMMISSIONER ESCOBAR SECONDED THE MOTION THAT PASSED WITH THE FOLLOWING VOTE: AYES; ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES.**

**OTHER BUSINESS:**

**6) POLICY  
DISCUSSION  
REGARDING  
AMENDED RPD'S  
AND RDCS  
SCORING**

PM Rowe gave the staff report, stating that the City is responsible for housing administration, which includes oversight of the BMR program for first time buyers. This evening's request, PM Rowe informed, is for clarification to changes to the orderly and contiguous category under Measure C. He went on to tell that there is concern /confusion regarding applications with five of BMR units and how to treat fractional shares of low, medium, moderate housing units. PM Rowe explained that as the Measure is now written, penalties are an issue. Both the City staff and the Developers are asking for policy direction regarding the moderate units within RPDs, PM Rowe clarified. Mr. Oliver is currently preparing an application for submittal and has expressed concern that he avoid a penalty if possible.

Lourdes Baldares was present as a representative of the Housing Division to provide more specific issues as needed.

Chair Weston opened the public hearing.

Dick Oliver, 275 Saratoga Ave., #105; Santa Clara, told Commissioners there are two parts to request:

- 1) Mr. Oliver told of revisions to plans at Mission Ranch from whereby the number of dwelling units was reduced from 500 to 317. He said the addition of BMRs due to Measure P and now with Measure C having even different requirements – well, all this adds to the number of units needed to 'make the requirements'. Mr. Oliver said that both Measures P and C have a provision for exceeding the number of units in order to meet the BMR requirements. Mr. Oliver continued by telling of the Alicante project, and noting his request applies only to on-going projects. Mr. Oliver explained how the percentage requirements - as changed - will affect the differing number of BMRs and how moderate units could be increased in some instances or how a variation could put a project over in some categories. Mr. Oliver noted that the moderate rate is greatly affected, as they are attached units. However, Mr. Oliver explained, if the unit is considered a modification, the application stands to lose points.
- 2) Under Measure C the Commission must give approve prior to the application

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being processed and he asking for that to occur, Mr. Oliver said. He further explained which housing categories are 'short' and 'over' asking that projects as a whole be allowed to 'balance' units. "We can't make changes in previous units and make up in subsequent phases." Mr. Oliver explained. He then asked that direction be given so that the problem can be solved and balance achieved.

Commissioner Lyle remarked that he thinks the problem must be considered as a whole. He commented that he thinks it has to be project to date. "We don't want to be in a position to have a disproportionate number of BMRs needed at the end of the project," Commissioner Lyle declared.

Discussion ensued with Commissioners and Mr. Oliver identifying the following:

- if this is reflected in only on-going projects, what is likelihood of that happening on a regular basis
- 'project to date' consideration is OK, but whole project is not
- how best to achieve balance while considering the request

With no others present to address the matter, the public hearing was closed.

Responding to comments by Commissioner Mueller, Ms. Baldares said somehow true balance with Measure P allows carry over of low income units now with a percentage in the formula. She said the question is should that be only for specific categories, as rounding up is not allowed. Ms. Baldares gave an example: a 52 unit project which results in a fraction and no BMR placed as a result. Her statements led to lengthy discussion regarding balancing.

Commissioner Mueller suggested the possibility of carrying fractions of a unit or project forward in income levels from Measure P to Measure C requirements.

Commissioner Acevedo asked why only low income units are affected now?

Commissioner Lyle explained that there is one other avenue, but no one takes it.

Discussion followed regarding the procedure of 'rounding up'. Should that practice be agreed to, Commissioners decided, it would be 'like to like' only.

"If a project ends up with a fraction for units in either the medium and moderate rate category," Commissioner Mueller said, "then at end if there are two fractions, and those two add up to 0.5 or more, the Developer could pay a fee. I'd rather see if we can get another moderate unit. I would much rather get the unit rather than the fees."

This notion was discussed as follows:

- Emphasis was placed on the potential for having such a plan work with notation that it must be part of the master plan.
- Commissioners agreed that if the plan were to be seriously considered, it would only at the end of a project.
- Whether it could be designated for ongoing or new projects – or both.
- It would be applicable only to median income units.

PM Rowe asked: where the score is between 0.5 and 1.0, would developer be required to put in a unit?

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Commissioner Escobar said that if the Commissioners were just talking about ~~existing~~ *existing* projects, there shouldn't be an on-going/continuing issue to be identified.

Commissioner Lyle said, "This issue is bigger with 'on-going'."

PM Rowe reminded the Developer must submit a Master Plan, so it should be possible to identify and design the BMRs.

Commissioner Lyle foresaw this could still be a problem with small projects.

Commissioner Acevedo returned to the 'like to like' issue, asking "Why?" PM Rowe explained that multiple phase projects will probably be affected.

Commissioner Lyle asked, "Suppose the score (percentage) comes out to be 0.45 in the BMR category and 0.5 .05 in the Median category, how will the assignment be made?" PM Rowe suggested in that case it would be best to assign the unit to whatever category the larger fractional unit represents. Commissioner Mueller commented that the City generally gets BMRs, but it would be beneficial to have more medians.

- The Commission took final action on this matter. With respect to whether an on-going project could add units to the Master Plan without penalty, the Commission said "yes" as long as the new/additional units were BMRs.
- The Commission also said like-to-like, eg., Low-to-Low or Medium-to-Medium fractions would carry forward, and any .5% or above fraction would round to another unit.

### ANNOUNCEMENTS:

PM Rowe announced that the City Council at the September 1, 2004 meeting approved a Commission recommendation for zoning for the Morgan Hill Ranch for medical and dental offices on the Digital Drive site. However, the request for the MRI installation will be considered after December 1, 2004 as they requested that the applicants for the DePaul Health Center come back with recommendations for an MRI facility at the current health center. They stated that if the representatives of hospital can obtain commitment and funding for an MRI system, they (the City Council) will seriously consider support for that facility.

Noting there was no further business to come before the Commission, Chair Weston adjourned the meeting at 9:40 p.m.

### ADJOURNMENT:

MINUTES RECORDED AND PREPARED BY:

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JUDI H. JOHNSON, Minutes Clerk

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